

AMENDED IN ASSEMBLY JUNE 7, 2005

AMENDED IN SENATE MARCH 29, 2005

**SENATE BILL**

**No. 575**

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**Introduced by Senators Torlakson, Ducheny, and Dunn**  
**(Coauthor: Senator Alquist)**  
(Coauthors: Assembly Members Jones and Lieber)

February 18, 2005

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An act to amend Section 65589.5 of the Government Code, relating to local planning.

LEGISLATIVE COUNSEL'S DIGEST

SB 575, as amended, Torlakson. Housing development projects.

The Planning and Zoning Law requires that a local agency not disapprove a housing development project, including farmworker housing, for very low, low-, or moderate-income households or condition its approval, including through the use of design review standards, in a manner that renders the project infeasible for development for those households unless it makes written findings, based upon substantial evidence in the record, as to one of a number of specified conditions.

The Planning and Zoning Law also requires that in any action to enforce these provisions, if a court finds that the local agency disapproved the project or conditioned its approval without making the required findings or without making sufficient findings supported by substantial evidence, the court shall issue an order or judgment to compel compliance with these provisions within 60 days, including an award of reasonable attorney's fees and costs of suit to the plaintiff or petitioner who proposed the housing development, and may issue further orders to ensure that the purposes and policies of these

provisions are fulfilled if its order or judgment has not been carried out within the 60-day period.

This bill would revise the conditions upon which a disapproval or a conditional approval of the housing development project is based.

*The bill would expressly authorize the applicant for the development project or a resident to bring an action in court pursuant to specified provisions and would also authorize the court to vacate the decision of the local agency, as specified, deem the application complete, and impose fines pursuant to specified procedures if the court finds that the local agency acted in bad faith and failed to carry out the court's order or judgment within the 60-day period.*

*The bill would require that a court action pursuant to these provisions be given precedence and would specify procedures for appeal of the court's order.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 65589.5 of the Government Code is
- 2 amended to read:
- 3 65589.5. (a) The Legislature finds and declares all of the
- 4 following:
- 5 (1) The lack of housing is a critical problem that threatens the
- 6 economic, environmental, and social quality of life in California.
- 7 (2) California housing has become the most expensive in the
- 8 nation. The excessive cost of the state's housing supply is
- 9 partially caused by activities and policies of many local
- 10 governments that limit the approval of housing, increase the cost
- 11 of land for housing, and require that high fees and exactions be
- 12 paid by producers of housing.
- 13 (3) Among the consequences of those actions are
- 14 discrimination against low-income and minority households, lack
- 15 of housing to support employment growth, imbalance in jobs and
- 16 housing, reduced mobility, urban sprawl, excessive commuting,
- 17 and air quality deterioration.
- 18 (4) Many local governments do not give adequate attention to
- 19 the economic, environmental, and social costs of decisions that
- 20 result in disapproval of housing projects, reduction in density of
- 21 housing projects, and excessive standards for housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible housing developments that contribute to meeting the housing need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (d) of Section 50199.50 of the Health and Safety Code, for very low, low-, or moderate-income households or condition approval, including through the use of design review standards, in a manner that renders the project infeasible for development for the use of very low, low-, or moderate-income households unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588 and is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing ~~need for very low, low-, and moderate-income housing, as determined pursuant to this article, for the planning period.~~ *need allocation pursuant to Section 65584 for the respective category of very low, low-, or moderate-income housing for the planning period, as determined pursuant to this article, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project would meet a portion of the unmet housing need in the very low, low-, or moderate-income category, then this paragraph may not be used to disapprove the project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions adopted*

1 *by the Department of Housing and Community Development*  
2 *pursuant to Section 65400. Any disapproval pursuant to this*  
3 *paragraph shall be supported by the findings otherwise required*  
4 *by applicable law, rule, or standards.*

5 (2) The development project as proposed would have a  
6 specific, adverse impact upon the public health or safety, and  
7 there is no feasible method to satisfactorily mitigate or avoid the  
8 specific adverse impact without rendering the development  
9 unaffordable to low- and moderate-income households. As used  
10 in this paragraph, a “specific, adverse impact” means a  
11 significant, quantifiable, direct, and unavoidable impact, based  
12 on objective, identified written public health or safety standards,  
13 policies, or conditions as they existed on the date the application  
14 ~~was deemed complete.~~ *was deemed complete. Inconsistency with*  
15 *the zoning ordinance or general plan land use designation shall*  
16 *not constitute a specific, adverse impact upon the public health*  
17 *or safety.*

18 (3) The denial of the project or imposition of conditions is  
19 required in order to comply with specific state or federal law, and  
20 there is no feasible method to comply without rendering the  
21 development unaffordable to low- and moderate-income  
22 households.

23 (4) The development project is proposed on land zoned for  
24 agriculture or resource preservation that is surrounded on at least  
25 two sides by land being used for agricultural or resource  
26 preservation purposes, or which does not have adequate water or  
27 wastewater facilities to serve the project.

28 (5) The development project is inconsistent with both the  
29 jurisdiction’s zoning ordinance and general plan land use  
30 designation as specified in any element of the general plan as it  
31 existed on the date the application was deemed complete, and the  
32 jurisdiction has adopted a revised housing element in accordance  
33 with Section 65588 that is in substantial compliance with this  
34 article.

35 ~~This~~

36 (A) *This* paragraph cannot be utilized to disapprove a housing  
37 development project defined in subdivision (a) if the  
38 development project is proposed on a site that is identified as  
39 suitable or available for very low, low-, or moderate-income  
40 households in the jurisdiction’s housing element, and consistent

1 with the density specified in the housing element, even though it  
2 is inconsistent with both the jurisdiction's zoning ordinance and  
3 general plan land use designation.

4 *(B) If the local agency has failed to identify in its housing*  
5 *element adequate sites with appropriate zoning and development*  
6 *standards and with services and facilities to accommodate its*  
7 *share of the regional housing need for the very low and*  
8 *low-income categories, this paragraph may not be utilized to*  
9 *disapprove a housing development project proposed for a site*  
10 *designated in any element of the general plan for residential uses*  
11 *or designated in any element of the general plan for commercial*  
12 *uses if residential uses are permitted or conditionally permitted*  
13 *within commercial designations. In any action in court, the*  
14 *burden of proof shall be on the local agency to show that its*  
15 *housing element does identify adequate sites with appropriate*  
16 *zoning and development standards and with services and*  
17 *facilities to accommodate the local agency's share of the*  
18 *regional housing need for the very low and low-income*  
19 *categories.*

20 (e) Nothing in this section shall be construed to relieve the  
21 local agency from complying with the Congestion Management  
22 Program required by Chapter 2.6 (commencing with Section  
23 65088) of Division 1 of Title 7 or the California Coastal Act  
24 (Division 20 (commencing with Section 30000) of the Public  
25 Resources Code). Neither shall anything in this section be  
26 construed to relieve the local agency from making one or more of  
27 the findings required pursuant to Section 21081 of the Public  
28 Resources Code or otherwise complying with the California  
29 Environmental Quality Act (Division 13 (commencing with  
30 Section 21000) of the Public Resources Code).

31 (f) Nothing in this section shall be construed to prohibit a local  
32 agency from requiring the development project to comply with  
33 objective, quantifiable, written development standards,  
34 conditions, and policies appropriate to, and consistent with,  
35 meeting the jurisdiction's share of the regional housing need  
36 pursuant to Section 65584. However, the development standards,  
37 conditions, and policies shall be applied to facilitate and  
38 accommodate development at the density permitted on the site  
39 and proposed by the development project. Nothing in this section  
40 shall be construed to prohibit a local agency from imposing fees

1 and other exactions otherwise authorized by law that are essential  
2 to provide necessary public services and facilities to the  
3 development project.

4 (g) This section shall be applicable to charter cities because  
5 the Legislature finds that the lack of housing is a critical  
6 statewide problem.

7 (h) The following definitions apply for the purposes of this  
8 section:

9 (1) “Feasible” means capable of being accomplished in a  
10 successful manner within a reasonable period of time, taking into  
11 account economic, environmental, social, and technological  
12 factors.

13 (2) “Housing development project” means a use consisting of  
14 either of the following:

15 (A) Residential units only.

16 (B) Mixed-use developments consisting of residential and  
17 nonresidential uses in which nonresidential uses are limited to  
18 neighborhood commercial uses and to the first floor of buildings  
19 that are two or more stories. As used in this paragraph,  
20 “neighborhood commercial” means small-scale general or  
21 specialty stores that furnish goods and services primarily to  
22 residents of the neighborhood.

23 (3) “Housing for very low, low-, or moderate-income  
24 households” means that either (A) at least 20 percent of the total  
25 units shall be sold or rented to lower income households, as  
26 defined in Section 50079.5 of the Health and Safety Code, or (B)  
27 100 percent of the units shall be sold or rented to  
28 moderate-income households as defined in Section 50093 of the  
29 Health and Safety Code, or middle-income households, as  
30 defined in Section 65008 of this code. Housing units targeted for  
31 lower income households shall be made available at a monthly  
32 housing cost that does not exceed 30 percent of 60 percent of  
33 area median income with adjustments for household size made in  
34 accordance with the adjustment factors on which the lower  
35 income eligibility limits are based. Housing units targeted for  
36 persons and families of moderate income shall be made available  
37 at a monthly housing cost that does not exceed 30 percent of 100  
38 percent of area median income with adjustments for household  
39 size made in accordance with the adjustment factors on which the  
40 moderate income eligibility limits are based.

(4) “Area median income” means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) “Neighborhood” means a planning area commonly identified in a community’s planning documents, and identified as a neighborhood by the individuals residing and working within the neighborhood. Documentation demonstrating that the area meets the definition of neighborhood may include a map prepared for planning purposes which lists the name and boundaries of the neighborhood.

(6) “Disapprove the development project” includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved.

(B) Fails to comply with the time periods specified in subparagraph (B) of paragraph (1) of subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes restrictions, including design changes, a reduction of allowable densities or the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by substantial evidence in the record.

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time

1 that the housing development project's application is determined  
2 to be complete, but the local agency proposes to disapprove the  
3 project or to approve it upon the condition that the project be  
4 developed at a lower density, the local agency shall base its  
5 decision regarding the proposed housing development project  
6 upon written findings supported by substantial evidence on the  
7 record that both of the following conditions exist:

8 (1) The housing development project would have a specific,  
9 adverse impact upon the public health or safety unless the project  
10 is disapproved or approved upon the condition that the project be  
11 developed at a lower density. As used in this paragraph, a  
12 "specific, adverse impact" means a significant, quantifiable,  
13 direct, and unavoidable impact, based on objective, identified  
14 written public health or safety standards, policies, or conditions  
15 as they existed on the date the application was deemed complete.

16 (2) There is no feasible method to satisfactorily mitigate or  
17 avoid the adverse impact identified pursuant to paragraph (1),  
18 other than the disapproval of the housing development project or  
19 the approval of the project upon the condition that it be  
20 developed at a lower density.

21 (k) *The applicant or any resident of the local jurisdiction may*  
22 *bring an action to enforce this section.* If in any action brought to  
23 enforce the provisions of this section, a court finds that the local  
24 agency disapproved a project or conditioned its approval in a  
25 manner rendering it infeasible for the development of housing for  
26 very low, low-, or moderate-income households, including  
27 farmworker housing, without making the findings required by  
28 this section or without making sufficient findings supported by  
29 substantial evidence, the court shall issue an order or judgment  
30 compelling compliance with this section within 60 days,  
31 including, but not limited to, an order that the local agency take  
32 action on the development project. The court shall retain  
33 jurisdiction to ensure that its order or judgment is carried out and  
34 shall award reasonable attorney's fees and costs of suit to the  
35 plaintiff or petitioner who proposed the housing development,  
36 except under extraordinary circumstances in which the court  
37 finds that awarding fees would not further the purposes of this  
38 section. If the court determines that its order or judgment has not  
39 been carried out within 60 days, the court may issue further  
40 orders as provided by law to ensure that the purposes and policies



1 ~~of this section are fulfilled.~~ purposes and policies of this section  
2 are fulfilled, including, but not limited to, an order to vacate the  
3 decision of the local agency, in which case the application for the  
4 project, as constituted at the time the local agency took the initial  
5 action determined to be in violation of this section, along with  
6 any standard conditions determined by the court to be generally  
7 imposed by the local agency on similar projects, shall be deemed  
8 approved unless the applicant consents to a different decision or  
9 action by the local agency.

10 (l) If the court finds that the local agency (1) acted in bad faith  
11 when it disapproved the housing development in violation of this  
12 section and (2) failed to carry out the court's order or judgment  
13 within 60 days as described in paragraph (k), the court in  
14 addition to any other remedies provided by this section, may  
15 impose fines upon the local agency that the local agency shall be  
16 required to deposit into a housing trust fund. Fines shall not be  
17 paid from funds that are already dedicated for affordable  
18 housing, including, but not limited to, redevelopment or low- and  
19 moderate-income housing funds and federal HOME and CDBG  
20 funds. The local agency shall commit the money in the trust fund  
21 within five years for the sole purpose of financing newly  
22 constructed housing units affordable to extremely low, very low,  
23 or low-income households. For purposes of this section, "bad  
24 faith" shall mean an action that is frivolous or otherwise entirely  
25 without merit.

26 (m) Any action brought to enforce the provisions of this  
27 section, shall be brought pursuant to Section 1094.5 of the Code  
28 of Civil Procedure, and the local agency shall prepare and  
29 certify the record of proceedings in accordance with subdivision  
30 (c) of Section 1094.6 of the Code of Civil Procedure no later than  
31 30 days after the petition is served, provided that the cost of  
32 preparation of the record shall be borne by the local agency. The  
33 action shall have precedence over all other civil actions and  
34 proceedings in the same manner and to the same extent as  
35 provided in subdivision (a) of Section 21167.1 of the Public  
36 Resources Code. Upon entry of the trial court's order denying  
37 relief, a party shall, in order to obtain appellate review of the  
38 order, file a petition within 20 days after service upon it of a  
39 written notice of the entry of the order, or within such further  
40 time not exceeding an additional 20 days as the trial court may

1 *for good cause allow. If the local agency appeals the judgment of*  
2 *the trial court, the local agency shall post a bond, in an amount*  
3 *to be determined by the court, to the benefit of the plaintiff if the*  
4 *plaintiff is the project applicant.*

5 ~~(t)~~—

6 (n) In any action, the record of the proceedings before the  
7 local agency shall be filed as expeditiously as possible and,  
8 notwithstanding Section 1094.6 of the Code of Civil Procedure,  
9 all or part of the record may be filed (1) by the petitioner with the  
10 petition or petitioner's points and authorities, (2) by the  
11 respondent with respondent's points and authorities, (3) after  
12 payment of costs by the petitioner, or (4) as otherwise directed by  
13 the court. If the expense of preparing the record has been borne  
14 by the petitioner and the petitioner is the prevailing party, the  
15 expense shall be taxable as costs.